IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8646 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

N G MUSANI - Petitioner(s)
Versus
GUJARAT WATER SUPPLY & SEWERAGE BOARD & 3 - Respondent(s)

==========

Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR MEHUL H RATHOD for Respondent(s) : 1 - 4.

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/06/2006

ORAL JUDGMENT

1. A retired employee of Gujarat Water Supply and Sewerage Board has approached this Court challenging the action of the respondents in cancelling the deemed date of promotion earlier granted to him. Short facts necessary to decide the controversy are as follows.

2. The petitioner initially joined service of the State Government in R & B Department as a Junior Clerk on 4-6-1966. He was promoted to the cadre

of Senior Clerk on 19-11-1969 still in Government service. On creation of the respondent no.1-Board, service of the petitioner was allocated to the Board w.e.f. 10-2-1988.

2.1 It is not in dispute that there were long standing disputes between the employees of the Board regarding their inter-se seniority. Some of these issues were settled through decisions of this Court. The petitioner as well as several other persons were therefore, found entitled to receive promotions to the higher cadre of Assistant Superintendent. It may be noted that it is common ground between the parties that cadre of Assistant Superintendent and Divisional Accountant are equivalent and therefore, an employee in the cadre of senior clerk can be considered for promotion to either of the two cadres. The respondent no.1-Board by an order dated 28-5-1983 granted promotion to the petitioner and some other employees from the cadre of senior clerk to that of the Assistant Superintendent. The petitioner and other

similarly situated employees were given not only the promotion, but were also assigned the deemed date of their promotion in the cadre of Assistant Superintendent by order dated 28-5-1993. The petitioner was given deemed date of promotion on 27-7-1988. Other employees were also given deemed dates of promotion of 1988.

2.2 The petitioner however, was keen to get promotion on the accounts side and he therefore, did not accept the promotion to the post of Assistant Superintendent. His promotion was therefore, treated as cancelled by the respondents by an order dated 18-6-1993. It may be noted that the petitioner was not the only person to refuse to accept the promotion to the post of Assistant Superintendent. Along with the petitioner there were other employees namely Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. who were also granted promotion to the post of Assistant Superintendent(but had refused the same) with deemed dates by a common order dated 28-5-1993.

Their promotions were also cancelled. Eventually, in his turn the petitioner was once again offered promotion to the post of Assistant Superintendent on 9-2-1996 which the petitioner accepted. After accepting the promotion to the post of Assistant Superintendent, the petitioner made representation to the respondents requesting for restoration of the deemed date of 27-7-1988 in the promotional cadre. After initially twice rejecting the application of the petitioner, the Zonal Officer of the Board by an order dated 12-9-2000 granted the request of the petitioner and accorded a deemed date of promotion of 27-7-1988 in the cadre of Assistant Superintendent. The respondent no.1-Board however, finding that such an order is irregular passed a subsequent order on 19-10-2001 and cancelled the deemed date of promotion of the petitioner. Since in the meantime, he had retired w.e.f. 31-8-2001, his provisional pension prepared on the basis of deemed date of promotion was ordered to be modified and overpayment made, if any, was

directed to be recovered. The petitioner challenged the said decision of the Board before this Court by filing Special Civil Application No. 1392/2001 which came to be disposed of by an order dated 7-12-2001 holding that authorities could not have cancelled the order for deemed date of promotion without hearing the petitioner. Thereupon, the Board granted hearing to the petitioner and passed a fresh speaking order dated 8-1-2002. It is this order that the petitioner has challenged in the present proceedings. During the pendency of the proceedings also there was some attempt to sort out differences between the parties, however, same has failed

3. I have heard learned advocates appearing for the parties at length. In short, the case of the petitioner is that he was granted deemed date of promotion by the Competent Authority which could not have been cancelled without hearing him that too after his retirement. He submitted that even other-wise order was just and proper. The

petitioner being senior to some of the persons, had earlier got promotion to the cadre of Assistant Superintendent, was entitled to receive deemed date of promotion upon settlement of seniority. He submitted that similarly situated other employees namely Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. who were identically placed were later on upon their promotion to the higher cadre were restored the benefits of deemed date of promotion. A specific contention in this regard has been taken in paragraph 3.9 of the petition. He submitted that there is no justification coming forthwith from the respondents to this averment of the petitioner.

4. Learned advocate Shri Rathod on the other hand appearing for the Board strongly opposed the petition. He submitted that the petitioner was offered promotion along with deemed date thereof by an order dated 28-5-1993. The petitioner for his personal reasons did not accept the promotion. The authorities therefore, treated

the promotion order as cancelled. With the cancellation of the promotion order, the deemed date also stood cancelled. In that view of the matter, in future when the petitioner received his promotion in the year 1996, there was neither any occasion nor any justification to restore the deemed date. He submitted that the Zonal Officer unauthorisedly granted the request of the petitioner though in past such request was rejected. He further submitted that other employees namely Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. were also similarly situated as the petitioner. He submitted that these employees were also offered promotion in the year 1996 in the cadre of Assistant Superintendent along with the petitioner. The petitioner this time accepted the promotion whereas his other colleagues for second time also refused for promotion. Ultimately in November,1996, these persons were promoted in the higher cadre of Divisional Accountant. They accepted such promotion and were therefore, restored deemed date of

promotion of 1988.

5. From the above recording of the facts, It can be seen that in May 1993, the petitioner and some of his colleagues were offered promotion to the post of Assistant Superintendent with deemed dates in the year of 1988. The petitioner and other employees such as Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. being more keen to receive promotion in the accounts section, declined such promotion. Promotion of all these persons were cancelled by the authorities by an order dated 18-6-1993. With this cancellation, even the deemed date stood cancelled. Ordinarily, therefore, on subsequent occasion when the employee concerned gets promotion, he would not have any claim for deemed date surviving. Had this been the simple question perhaps, the petitioner would not have been justified in claiming restoration of the deemed date. However, in case of other similarly situated persons namely Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi

etc., the Board took entirely different stand. These persons though like the petitioner had refused promotion in May 1993 and whose promotions were also cancelled by the Board in June 1993, were not only granted promotion in the higher cadre in November 1996, were also restored the deemed date of 1988. Significantly, when the petitioner accepted his promotion in the administrative side on 9-2-1996, these persons had actually once again declined the promotion. The Board not only considered these persons for promotion within a short span of 9 months thereof in their favoured branch, also restored them the deemed date of their promotions. To my mind this is a very clear case of discriminatory treatment being given to the petitioner. I see no difference between the two sets of employees. If at all, the case of other employees was worse than that of the petitioner having declined promotion not once but twice. Learned advocate Shri Rathod sought to explain the distinction in treatment being given to each set of employees by suggesting that Shri O.V.

Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. had declined promotion in February 1996 when the petitioner accepted such promotion and had the petitioner also not accepted the promotion in February 1996, when some employees refused promotion, he also would have received promotion in the cadre of Divisional Accountant with restored deemed date of promotion. The petitioner who accepted promotion is being penalised and employees who refused the promotion are being rewarded with restoration of deemed dates of promotion. When the respondents themselves agree that the cadre of Assistant Superintendent and Divisional Accountant are equivalent cadres and employees in the cadre of senior clerk can seek promotion in either of the two cadres, surely, the petitioner cannot be blamed for having accepted the order of employer and reported in the promotional post though the same was not his favoured branch especially when other employees chose to seek promotions in their prefereed cadre and declined promotion on as many as two

occasions. I see no material difference between the petitioner and his other colleagues namely Shri O.V. Suraiya, Shri R.D. Bhatt, Shri P.K. Vakani, Shri S.V. Bavisi etc. and other so far as claim for restoration of deemed dates is concerned. On this short ground alone, I am inclined to accept the prayer of the petitioner.

6. Quite apart from the question whether the Zonal Officer was authorised to grant the request of the petitioner for deemed date or not and quite apart from the fact of the petitioner that once the Competent Authority having granted the request, the Board could not have withdrawn the same without hearing the petitioner that too after his retirement, I find that the petitioner has been discriminated by the Board. Similarly situated persons have been granted not only promotion but also the deemed date thereof. The petitioner shall also receive the same treatment.

7. In the result, the impugned speaking order dated

8-1-2002 is quashed. The petitioner shall be restored his deemed date of promotion and all other attendant benefits. The question of recovery of-course does not survive.

8. In view of the above discussion, the petition is allowed. Rule made absolute accordingly, with no order as to costs.

(Akil Kureshi,J.)

(raghu)